

Liability Limitation Provision in Managers Amendment to H.R. 3150,  
Secure Transportation for America Act of 2001  
(Prepared by the Democratic Staff of the House Judiciary Committee)

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On September 22, 2001, the “Air Transportation Safety and System Stabilization Act” was signed into law by the President. In addition to providing federal assistance to the airline industry, it provided for a two track liability system. The first track creates a victim compensation fund, which provides victims of the September 11, 2001 terrorist-related aircraft crashes at the World Trade Center, the Pentagon, or site of the aircraft crash in Shanksville, Pennsylvania, with compensation. Specifically, the legislation authorizes a Special Master, appointed by the Attorney General, to review claims, within 120 days, submitted by claimants. Negligence is not required to be established to obtain compensation under this track. Funds for this victim compensation fund are taken derived from authorized funds from the federal government.

The second track is available to persons who elect not to pursue the victim compensation fund. These individuals can pursue a more traditional tort claim based on negligence. But if the claim is against American or United Airlines, it must be brought in the District Court of the Southern District of New York, where all the cases are to be consolidated. In these cases, liability is limited to the amount of available insurance.

The Manager’s amendment does not disturb the Victim’s Compensation Fund. However, it does amend the second track to expand the number of companies eligible to benefit from the liability limitations available described above and to add new limitations, namely eliminating punitive damages, eliminating prejudgment interest, mandating collateral source and capping victims attorneys fees. The following is a more detailed summary of the Section 201 of the Manager’s Amendment.

**Limiting Liability for Unnamed and Unknowable Parties (Section 408 (a))**

The amendment would expand current law from limiting the liability of **air carriers** to limiting the liability of “**any person**” liable for any damages arising out of the September 11, 2001 hijacking and crashes. *Under this new provision, the Federal government is asked to go far beyond the two named defendants that it*

*currently protects in the Air System Stabilization Act (United Airlines and American Airlines). In fact, this provision requires the government to assume liability for “unnamed parties” including possible bad actors. Although this new amendment would provide coverage for those who have asked for and may well warrant relief (such as the owner of the World Trade Center and the Boeing Corporation), it would also limit the liability of the screening companies whose negligence may have allowed the hijackers to enter the aircrafts with weapons. This expansion of the legislation would allow hundreds of unknown parties to have protection against liability whether the protection is warranted or not. At a minimum, those eligible for limited liability should be identified, their insurance coverage ascertained, and the need for this protection substantiated. As a result, this bill shifts untold amounts of liability to the federal government with no substantiation.*

### **Limits on Damages (Section 4088 (b)(4))**

The amendment would impose a new limitation on damages injured victims can recover by stating that a party of the action is not liable beyond the amount of its insurance. The bill also specifically provides that any responsible defendant shall not be held responsible for (1) punitive damages or (2) interest prior to the judgement. It also limits the amount of recovery an injured plaintiff can receive by subtracting from the award any amounts the plaintiff may have received from other wrongdoers (collateral source).

*(1) Punitive damages are monetary damages awarded to plaintiffs in civil actions when a defendant's conduct has been found to flagrantly violate a plaintiff's rights. The standard for awarding punitive damages is set at the state level, but is generally allowed only in cases of wanton, willful, reckless or malicious conduct. These damages are used to deter and punish particularly egregious conduct.*

*Eliminating punitive damages totally undermines the deterrent and punishment function of the tort law. The threat of meaningful punitive damages is a major deterrent to wrongdoing, and eliminating punitive damages would severely undercut their deterrent value since reckless or malicious defendants could find it more cost effective to continue their callous behavior and risk paying small punitive damage awards. If a baggage screening company hired a felon, the company could normally be held liable for punitive damages. However, this*

*proposed provision could remove the ability of a victim to make such a claim.*

*(2) Interest payments are an added incentive to move the judicial process along because a delay would result in a penalty of added interest to the judgment. Without the threat of added interest payments defendant attorneys may be prone to delay proceedings because the real dollar value of a judgment amount would be reduced, making the judgment the same no matter how long the process. Both Virginia and New York law allow for pre-judgment interest in certain cases. Limiting interest would unfairly affect the judgment award collected by the victims and leave them vulnerable to a delayed judicial process.*

*(3) Collateral source reduction would mandate the reduction of the amount of the victims' award by collateral source compensation received by the claimant or that the claimant may be entitled to, such as health or disability insurance. Neither New York nor Virginia require the court to reduce an award by collateral source compensation. There are two problems with this change:*

*First, a reduction of a victims award due to collateral source compensation would result in wrongdoers escaping their responsibility. This amendment subtracts any other potential sources of recovery the victim may have from any damages the wrongdoer should pay. Losses caused by negligence or wrongdoing would be shifted from liable defendants to the government or private insurers who made the "collateral source" payment.*

*Second, the amendment does not require that the victim is actually able to collect from the insurance policy or other collateral source for the wrongdoer to escape responsibility. The amendment only requires that the victim be entitled to recovery from some other source.*

### **Caps on Attorneys' Fees (Section 408(b)(5))**

*This provision limits victims attorneys' fees by making them subject to court discretion and by limiting the amount charged to 20 percent of the damages ordered by the court or the settlement. An attorney who violates this limitation will be fined up to \$2000, imprisoned for a year, or both. Neither New York nor Virginia allow attorneys' fee caps. Instead, those states require a lawyer's fee to be reasonable.*

*Fee caps result in less access to justice for lower income populations. A payment ceiling or fee cap limits the economic incentive for attorneys to take on complex or difficult-to-prove claims under the contingency fee system. In turn, this would make it much more difficult for lower income populations to secure good representation.*

*Further, this proposal is one-sided because it only applies to plaintiffs' attorneys. It is blatantly unfair to allow defendants to spend unlimited amounts of money on representation while plaintiffs, even when dealing with the same legal issues, are severely limited in how much they can spend.*

### **One Way Disclaimer (Section 408 (d))**

This amendment provides a disclaimer which states that nothing in the section implies that a person **is** liable for damages arising out of the hijacking and crashes of September 11, 2001. *The language in the amendment as written is one-sided. If it was neutral, it would provide that nothing in the section implies that a person is liable or **not liable** for damages arising out of the September 11, 2001 hijacking and crashes. This is illustrative of the overall problem with the amendment– it is written from a totally one-sided perspective to benefit defendants with little regard for victims.*